U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 12267092

Date: SEP. 1, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner seeks second preference immigrant classification as a member of the professions holding an advanced degree, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner is not qualified for the EB-2 classification as a member of the professions holding an advanced degree, or as an individual of exceptional ability. He also determined that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest. On appeal, the Petitioner asserts that the Director erred in denying the petition.

In these proceedings, it is the petitioner's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences, arts, or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

> (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
>
> (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will

> substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.
>
> (B) Waiver of job offer –
>
> (i) National interest waiver. . . . [T]he Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

While neither the statute nor the pertinent regulations define the term "national interest," we set forth a framework for adjudicating national interest waiver petitions in the precedent decision *Matter of Dhanasar*, 26 I&N Dec. 884 (AAO 2016).[1] *Dhanasar* states that after a petitioner has established eligibility for EB-2 classification, U.S. Citizenship and Immigration Services (USCIS) may, as matter of discretion[2], grant a national interest waiver if the petitioner demonstrates: (1) that the foreign national's proposed endeavor has both substantial merit and national importance; (2) that the foreign national is well positioned to advance the proposed endeavor; and (3) that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.

The first prong, substantial merit and national importance, focuses on the specific endeavor that the foreign national proposes to undertake. The endeavor's merit may be demonstrated in a range of areas such as business, entrepreneurialism, science, technology, culture, health, or education. In determining whether the proposed endeavor has national importance, we consider its potential prospective impact.

The second prong shifts the focus from the proposed endeavor to the foreign national. To determine whether he or she is well positioned to advance the proposed endeavor, we consider factors including, but not limited to: the individual's education, skills, knowledge, and record of success in related or similar efforts; a model or plan for future activities; any progress towards achieving the proposed endeavor; and the interest of potential customers, users, investors, or other relevant entities or individuals.

The third prong requires the petitioner to demonstrate that, on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification. In performing this analysis, USCIS may evaluate factors such as: whether, in light of the nature of the foreign national's qualifications or the proposed endeavor, it would be impractical either for the foreign national to secure a job offer or for the petitioner to obtain a labor certification; whether, even assuming that other qualified U.S. workers are available, the United States would still benefit from the foreign national's contributions; and whether the national interest in the foreign national's contributions is sufficiently urgent to warrant forgoing the labor certification process. In each case, the factor(s)

[1] In announcing this new framework, we vacated our prior precedent decision, *Matter of New York State Department of Transportation*, 22 I&N Dec. 215 (Act. Assoc. Comm'r 1998) (*NYSDOT*).

[2] *See also Poursina v. USCIS*, No. 17-16579, 2019 WL 4051593 (Aug. 28, 2019) (finding USCIS' decision to grant or deny a national interest waiver to be discretionary in nature).

considered must, taken together, indicate that on balance, it would be beneficial to the United States to waive the requirements of a job offer and thus of a labor certification.[3]

II. ANALYSIS

A. Member of the Professions Holding an Advanced Degree

To show that a petitioner holds a qualifying advanced degree, the petition must be accompanied by "[a]n official academic record showing that the [individual] has a United States advanced degree or a foreign equivalent degree." 8 C.F.R. § 204.5(k)(3)(i)(A). Alternatively, a petitioner may present "[a]n official academic record showing that the [individual] has a United States baccalaureate degree or a foreign equivalent degree, and evidence in the form of letters from current or former employer(s) showing that the [individual] has at least five years of progressive post-baccalaureate experience in the specialty." 8 C.F.R. § 204.5(k)(3)(i)(B).

The Director determined that while the Petitioner holds the foreign equivalent of a U.S. bachelor's degree in nursing, she has not established that she possesses the requisite five years of progressive post-baccalaureate experience in the nursing specialty. Specifically, he concluded the submitted work experience letters did not comport with the regulation at 8 C.F.R. § 204.5(g)(1), which provides in pertinent part that "[e]vidence relating to qualifying experience or training shall be in the form of letter(s)from current or former employer(s) or trainer(s) and shall include the name, address, and title of the writer, and a specific description of the duties performed by the alien or of the training received."

For the following reasons, we withdraw the Director's determination regarding the Petitioner's work experience and conclude that the Petitioner meets the requirements for the EB-2 classification through 8 C.F.R. § 204.5(k)(3)(i)(B).[4] The record establishes that the Petitioner obtained a bachelor's degree in nursing in 1995. The Petitioner has provided letters, training certificates, newsletters, articles, and other evidence to establish that since earning her bachelor's degree she has been engaged in progressively responsible positions providing clinical patient care, supervising oversight of other nurses, coordinating clinical rotations for nursing students, as well as working as a university professor teaching nursing courses.[5] While the work experience letters appear conclusory, the Petitioner supplemented the record with evidence that provided additional details as required under 8 C.F.R. § 204.5(g)(1). For example, the record contains a letter from P- University [UNP], which outlines the Petitioner's employment as follows:

> [The Petitioner] was admitted to [UNP] on September 1, 2006, as Professor DNS 1, full-time. And on June 1, 2011, was assigned by me to the commissioned position of Clinical Rotations Coordinator of the School of Health of this [university], also full-time, until August 31, 2015.

---

[3] *See Dhanasar*, 26 I&N Dec. at 888-91, for elaboration on these three prongs.

[4] As the Petitioner has established eligibility for the EB-2 classification under 8 C.F.R. § 204.5(k)(3)(i)(B), her assertions on appeal regarding her eligibility as an individual possessing exceptional ability under 8 C.F.R. § 204.5(k)(3)(ii), or as a professional holding an advanced degree in the specialty under 8 C.F.R. § 204.5(k)(3)(i)(A), are moot, and will not be addressed.

[5] The Petitioner submitted evidence to support the petition. While we may not discuss every document submitted, we have reviewed and considered each one.

The Petitioner further supplemented the employment letters by providing declarations from UNP's academic provost covering July 2006 through June 2011 that itemize the courses (and relating course hours) that the Petitioner taught. For instance, the provost attested that the Petitioner taught courses in "child and adolescent health nursing" from January to June 2007, for 140 course hours, and supervised nursing internships for 380 hours. The record also contains letters of reference from other UNP staff, who discuss, among other things, the Petitioner's clinical rotation coordinator and internship supervisory responsibilities.

Collectively considering the evidence in the record in totality, we conclude the Petitioner has established, more likely than not, that she possessed the foreign degree equivalent of a bachelor's degree in nursing, and at least five years of progressive post-baccalaureate experience in the nursing specialty at the time of filing of the petition and is therefore eligible for the EB-2 classification in accordance with 8 C.F.R. § 204.5(k)(3)(i)(B). It is the Petitioner's burden to prove by a preponderance of evidence that she is qualified for the benefit sought. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Here, the Petitioner has met her burden to establish her eligibility for the EB-2 classification.

B. National Interest Waiver

The remaining issue to be determined is whether the Petitioner has established that a waiver of the requirement of a job offer, and thus a labor certification, would be in the national interest. For the reasons discussed below, we conclude that the Petitioner has not established her eligibility for a national interest waiver under the analytical framework set forth in *Dhanasar*.

In Part 6 of the Form I-140, "Basic Information About the Proposed Employment," the Petitioner lists her job title as "nurse," and indicates that she will provide "nursing care for elderly patients and training nurses in the field." She also initially provided a work plan, in which she discusses her desire to teach nursing in the United States at the collegiate level, and her intention to pursue a "project of home care seeking to care for the public that needs care in their residence due to the lack of financial and/or physical conditions, that is the public who are not able to have the ideal service in hospitals and attendance centers." Towards that end, she indicates that she needs to "complete the process of acquisition of the nursing professional license in the [United States]," "[i]initiate the process of academic performance in [United States] universities. . . .," and, asserts that for the "home care project, I will have a qualified professional team in attendance outside hospitals, with the objective of promoting the quality of life of patients and elderly. . . ." [6]

The record includes letters of support from medical practitioners and academics in Brazil who speak favorably about how the Petitioner provided patients with nursing care and improved their health while employed there; they also discuss some of the projects that she worked on while employed by organizations such as UNP. In addition, the Petitioner presents articles discussing healthcare issues,

[6] We note that, while information about the nature of the Petitioner's proposed endeavor is necessary for us to determine whether she satisfies the *Dhanasar* framework, she need not have a job offer from a specific employer as she is applying for a waiver of the job offer requirement.

such as the geriatric nursing care shortage in our country, and the need for change and improvements in the United States nursing academic system.

Regarding the first prong of the *Dhanasar* framework, the Director concluded that the Petitioner submitted insufficient evidence that her work as a nurse and nurse educator would broadly impact the healthcare community beyond the patients she would serve and the students she would teach. The Director also determined that the record did not establish that the Petitioner's work both as a nurse and a nurse educator has significant potential to employ U.S. workers, or will broadly enhance societal welfare in the United States. We agree that while the record demonstrates that the Petitioner's proposed clinical and academic work has substantial merit, the evidence is not sufficient to show this endeavor's national importance.

On appeal, the Petitioner asserts that her endeavor "as a nurse, professor, and home care provider in the field of nursing, while providing nursing services and instructing nursing students" has national importance. The Petitioner points to an opinion letter from Dr. F- of the [redacted] University of [redacted] submitted in response to the Director's request for evidence (RFE). The professor emphasizes the knowledge the Petitioner gained throughout her career, noting that she "has significant potential to teach and train other U.S. professionals in the field. With such extensive training and hand-on experience, she is highly qualified to teach and implement her healthcare methods and strategies to other U.S. professionals and healthcare facilities." However, the Petitioner's expertise acquired through her employment relates to the second prong of the *Dhanasar* framework, which "shifts the focus from the proposed endeavor to the foreign national." *Matter of Dhanasar*, 26 I&N Dec. at 890. The issue here is whether the specific endeavor that the Petitioner proposes to undertake has substantial merit and national importance under *Dhanasar*'s first prong. Though the professor opines that the Petitioner's "proposed endeavor of applying her skills in providing family healthcare, as well as hospital care, to patients within the United States has [] national importance," and asserts that her "knowledge and expertise will allow her to have an impact in the community and the general population," he does not sufficiently identify, analyze or discuss the nature of the specific work the Petitioner will perform within her prospective endeavor in the United States.[7]

The professor also discusses nursing care shortages and other health care challenges facing the United States, concluding that the Petitioner's proposed endeavor has national importance. In determining national importance, the relevant question is not the importance of the industry or profession in which the individual will work; instead we focus on the "the specific endeavor that the foreign national proposes to undertake." *See Dhanasar*, 26 I&N Dec. at 889. In *Dhanasar*, we further noted that "we look for broader implications" of the proposed endeavor and that "[a]n undertaking may have national importance for example, because it has national or even global implications within a particular field." *Id.* Here, the Petitioner's reliance on the professor's conclusion that a petitioner may meet the first

[7] Similarly, the Petitioner has provided reference letters from former colleagues who outline her previous work accomplishments in Brazil and assert her services would be beneficial to our country should she immigrate to the United States. The letter writers hold the Petitioner in high regard. However, the submitted letters do not provide sufficient information regarding the prospective impact of the *specific* endeavor(s) that the Petitioner will focus on should this petition be approved. The submission of reference letters supporting the petition is not presumptive evidence of eligibility; USCIS may evaluate the content of those letters to determine whether they support the petitioner's eligibility. *See 1756, Inc. v. U.S. Att'y Gen.*, 745 F. Supp. 9, 15 (D.D.C. 1990).

Dhanasar prong based on the importance of the industry or profession in which she will work is misplaced.

We conclude that the professor's opinion letter lends little probative value to the matter here. As a matter of discretion, we may use opinion statements submitted by the Petitioner as advisory. *Matter of Caron Int'l, Inc.*, 19 I&N Dec. 791, 795 (Comm'r 1988). However, we will reject an opinion or give it less weight if it is not in accord with other information in the record or if it is in any way questionable. *Id.* We are ultimately responsible for making the final determination regarding an individual's eligibility for the benefit sought; the submission of expert opinion letters is not presumptive evidence of eligibility. *Id.*; *see also Matter of V-K-*, 24 I&N Dec. 500, 502 n.2 (BIA 2008) (noting that expert opinion testimony does not purport to be evidence as to "fact"). For the sake of brevity, we will not address other deficiencies within the professor's analyses.

The Petitioner maintains that "the United States would greatly benefit from [her] expertise and skills [as] an experienced [n]urse." To evaluate whether the Petitioner's proposed endeavor satisfies the national importance requirement we look to evidence documenting the "potential prospective impact" of her work. With respect to the Petitioner's proposed care and treatment of patients, the record does not establish that her clinical work would impact the nursing field and healthcare industry more broadly, as opposed to being limited to the patients she serves. Accordingly, without sufficient documentary evidence of its broader impact, the Petitioner's clinical work as a nurse does not meet the "national importance" element of the first prong of the *Dhanasar* framework. Similarly, in *Dhanasar*, we determined that the petitioner's teaching activities did not rise to the level of having national importance because they would not impact his field more broadly. *See Dhanasar*, 26 I&N Dec. at 893.

On appeal, the Petitioner asserts that during her employment in Brazil she "[d]eveloped an interdisciplinary program in which students learned through the different medical disciplinaries how to recognize community health needs and improve community qualify of life. . . to bring about interest in nursing and medical care that would allow a higher percentage of students to become aware of the different areas of nursing." Notably, the Director requested evidence in the RFE to establish the national importance of her endeavor, to include a detailed description of the proposed endeavor, and an explanation as to why it is of national importance, supported by corroborative, documentary evidence. Regarding the Petitioner's prospective teaching plans, she responded to the Director's RFE by reiterating her initially submitted academic work plan, as follows:

> Initiate the process of university academic performance in the universities of the USA and through [LIU], as quoted in the letter of recommendation of [UNP], institution for which I exercised my academic expertise in Brazil. The UNP is part of [LIU], allowing my access and contribution to the quality training of future nurses in the USA, through courses, classes, and Lectures in Nursing School.

Considering this vague statement, and the lack of adequate evidence regarding the specific nature of the Petitioner's proposed academic endeavor, we determine that she has not shown that she will offer original academic innovations to advance the nursing profession and the healthcare industry through her endeavor, or that it otherwise will have wider implications in her field. Moreover, the Petitioner has not demonstrated that the specific endeavor she proposes to undertake has significant potential to

employ U.S. workers or otherwise offers substantial positive economic effects for our nation. Without sufficient information or evidence regarding any projected U.S. economic impact attributable to her future work, the record does not show that benefits to the U.S. regional or national economy resulting from the Petitioner's endeavor would reach the level of "substantial positive economic effects" contemplated by *Dhanasar*. *Id*. at 890. Accordingly, the Petitioner's proposed work does not meet the first prong of the *Dhanasar* framework.

Because the documentation in the record does not establish the national importance of her proposed endeavor as required by the first prong of the *Dhanasar* precedent decision, the Petitioner has not demonstrated eligibility for a national interest waiver. Further analysis of her eligibility under the second and third prongs outlined in *Dhanasar*, therefore, would serve no meaningful purpose.

III. CONCLUSION

The Petitioner has demonstrated that she qualifies for the EB-2 classification under section 203(b)(2)(A) of the Act. However, as the Petitioner has not met the requisite first prong set forth in the *Dhanasar* analytical framework, we conclude that she has not established she is eligible for or otherwise merits a national interest waiver as a matter of discretion.

ORDER: The appeal is dismissed.